

Babbitt et al.  
Application Serial # 09/505,821  
Attorney Docket No. 391331

### REMARKS

Claims 13 and 15-21 are pending in the application.

Claim 13 has been amended to clarify that the program instructions are operable for execution of a voting application program that is configured to permit a voter to cast votes in an election. This amendment finds support, for example, on page 9 at lines 10-18 of the specification as filed.

#### **Claim rejections 35 U.S.C §112 second paragraph**

Claim 13 has been amended to delete reference to a "read only" storage medium. This broadening amendment overcomes the stated objection.

#### **Claim rejections 35 U.S.C. §102(e)**

Claims 13 and 15-19 stand rejected as being anticipated by United States Patent No. 6,279,109 issued to Brundridge. Brundridge teaches the use of an ei Torito compliant boot disk that is used by a manufacturer, especially Dell Computer, as an aid to running an operating system on a computer that may have a different operating system installed on a persistent magnetic storage medium. As amended, claim 13 distinguishes Brundridge '109 by reciting that the program instructions are operable for execution of a voting application program that is configured to permit a voter to cast votes in an election. Brundridge '109 does not teach or suggest this feature of the claims.

#### **Claim rejections 35 U.S.C. §103(a)**

Claims 20 and 21 stand rejected over Brundridge '109, as applied above, in view of "A Report on the Feasibility of Internet Voting," California Internet Voting Task Force (2000). Brundridge '109 is used to show a bootstrap CD that is suitable for loading an operating system. The Task Force publication is said to show that Trojan horse programs or other malicious viruses present a potential technological threat to Internet voting. The Office finds that those skilled in the art would have been motivated to use the Brundridge '109 bootstrap CD to mitigate the Trojan horse problem observed by the California Internet Voting Task Force.

Curiously, neither reference mentions a solution to the problem observed by the Task force. The Brundridge '109 intends its bootstrap CD merely to

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assist the loading and use of software in a manufacturing environment, such as that of Dell Computer. The Task Force merely recognizes a problem, but does not suggest a solution. Merely recognizing a need without either reference proposing a solution is not sufficient to support a finding of obviousness. The rejection as stated does not recognize the manner of solution to the specific problem that Applicant has solved. This is seen because Brundridge is completely silent as to a remedy for computer viruses and the Task Force merely throws out a problem that has not been solved. This shows that the rejection is improperly made in hindsight because those skilled in the art would not choose to use the Brundridge '109 patent to adopt a manufacturing process that is not recognized as a solution to the problem.

The Task Force merely recognizes a problem without proposing a solution, and especially not the solution that Applicant chose to adopt. Rather than supporting a finding of obviousness, the Task Force article shows that what is claimed is nonobvious because it was published in January of 2000, whereas the present application was filed in February of 2000, yet the Task Force was unable to identify a solution to the problem. This shows an inability of others to solve the problem that applicant has overcome, which is recognized as a secondary indicia of nonobviousness.

### CONCLUSION

For the forgoing reasons, the claims appear to be in allowable condition. Based upon the foregoing discussion, Applicant's attorney submits that the amended claims are allowable and respectfully solicits a Notice of Allowance. Authorization is given to charge deposit account 12-0600 if any additional fees are due.

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